

EXHIBIT B

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ENDORSED
FILED
San Francisco County Superior Court

MAR 29 2007

GORDON PARK-LI, Clerk
BY: BERNADETTE THOMPSON
Deputy Clerk

Attorneys for Defendants
JOHNSON & JOHNSON, MCNEIL CONSUMER
HEALTHCARE, a Division of MCNEIL-PPC, INC.
(erroneously sued as MCNEIL CONSUMER &
SPECIALTY PHARMACEUTICALS,
a Division of MCNEIL-PPC, INC.), MCKESSON
CORPORATION, and WAL-MART STORES, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

THOMAS B. GAINES, a deceased minor
child by and through his personal
representative(s) and/or successor(s) in
interest; DIANA L. GAINES, individually,
as Executor of the Estate of Thomas B.
Gaines, and as Thomas B. Gaines' personal
representative and successor in interest;
GARY D. GAINES, individually and as
Thomas B. Gaines' personal representative
and successor in interest; and THE
ESTATE OF THOMAS B. GAINES,

Plaintiffs,

v.

JOHNSON & JOHNSON, a New Jersey
corporation; MCNEIL CONSUMER &
SPECIALTY PHARMACEUTICALS, a
Division of MCNEIL-PPC, INC., a New
Jersey corporation; MCKESSON
CORPORATION, a Delaware corporation;
WAL-MART STORES, INC., a Delaware
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No. CGC-06-457600

**DEFENDANT JOHNSON &
JOHNSON'S NOTICE OF MOTION
AND MOTION TO COMPEL
FURTHER RESPONSES TO FIRST
SET OF SPECIAL
INTERROGATORIES, FIRST
REQUEST FOR PRODUCTION, FIRST
SET OF FORM INTERROGATORIES,
AND FIRST SET OF REQUESTS FOR
ADMISSIONS**

Date: May 7, 2007
Time: 10:30 a.m.
Place: Department 610
Judge: Commissioner Bruce E. Chan

Complaint Filed: November 3, 2006

///

DRINKER BIDDLE & REATH LLP
50 Fremont Street, 20th Floor
San Francisco, CA 94105

NOTICE OF MOTION AND MOTION TO COMPEL FURTHER RESPONSES TO DEFENDANT'S FIRST SETS OF WRITTEN
DISCOVERY

COPY

1 TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on May 7, 2007 at 10:30 a.m. or as soon thereafter
 3 as the matter may be heard, in Department 610 of the above-entitled court, located at 400
 4 McAllister Street, San Francisco, California, Defendant Johnson & Johnson
 5 ("Defendant") will, and hereby does, move this Court for an order compelling Plaintiffs
 6 to produce documents and to serve signed and verified good faith responses to
 7 Defendant's First Request for Production, First Set of Special Interrogatories, First Set of
 8 Form Interrogatories, and First Set of Requests for Admissions.

9 This motion is made pursuant to Code of Civil Procedure sections 2030.290,
 10 2031.300 and 2033.280 on the ground that Plaintiffs' have waived their objections to
 11 Defendant's First Sets of Form and Special Interrogatories, Document Request and
 12 Requests for Admission, including assertions of attorney work-product, because their
 13 responses were not timely. This Motion is further made pursuant to Code of Civil
 14 Procedure sections 2030.300 and 2031.310 on the ground that Plaintiffs' responses to
 15 Defendant's Form and Special Interrogatories, and Document Request are evasive and
 16 incomplete, and Plaintiffs have not produced documents responsive to the Document
 17 Request. This Motion is further made pursuant to Code of Civil Procedure sections
 18 2030.250, 2031.250, and 2033.240 on the grounds that Plaintiffs did not serve signed or
 19 verified responses to Defendant's Form and Special Interrogatories, Request for
 20 Production, and Requests for Admission.

21 This Motion is based upon this Notice of Motion and Motion, Defendant's
 22 Memorandum of Points and Authorities, the Rule 3.1020 Separate Statement in Support
 23 of the Motion, the Declaration of Benjamin J. Holl, including exhibits thereto, all filed

24 ///

25 ///

26 ///

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1 concurrently herewith, the complete files and records in this action, and such oral
2 argument as the Court shall permit at the hearing on this Motion.

3
4 Dated: March 29 2007

DRINKER BIDDLE & REATH LLP

5 
6 BENJAMIN J. HOLL

7 Attorneys for Defendants
8 JOHNSON & JOHNSON, MCNEIL
9 CONSUMER HEALTHCARE, a Division
10 of MCNEIL-PPC, INC. (erroneously sued
11 as MCNEIL CONSUMER & SPECIALTY
12 PHARMACEUTICALS, a Division of
13 MCNEIL-PPC, INC.), MCKESSON
14 CORPORATION, and WAL-MART
15 STORES, INC.

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SPECIALTY PHARMACEUTICALS,
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CORPORATION, and WAL-MART STORES, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

THOMAS B. GAINES, a deceased minor
child by and through his personal
representative(s) and/or successor(s) in
interest; DIANA L. GAINES, individually,
as Executor of the Estate of Thomas B.
Gaines, and as Thomas B. Gaines' personal
representative and successor in interest;
GARY D. GAINES, individually and as
Thomas B. Gaines' personal representative
and successor in interest; and THE
ESTATE OF THOMAS B. GAINES,

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JOHNSON & JOHNSON, a New Jersey
corporation; MCNEIL CONSUMER &
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Jersey corporation; MCKESSON
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WAL-MART STORES, INC., a Delaware
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No. CGC-06-457600

**DEFENDANT JOHNSON &
JOHNSON'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION TO COMPEL
FURTHER RESPONSES TO FIRST
SET OF SPECIAL
INTERROGATORIES, FIRST
REQUEST FOR PRODUCTION, FIRST
SET OF FORM INTERROGATORIES,
AND FIRST SET OF REQUESTS FOR
ADMISSIONS**

Date: May 7, 2007
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Judge: Commissioner Bruce E. Chan

Complaint Filed: November 3, 2006

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DRINKER BIDDLE & REATH LLP
50 Fremont Street, 20th Floor
San Francisco, CA 94105

SF13818382

DEFENDANT'S MEMO OF P's & A's IN SUPPORT OF MOTION TO COMPEL FURTHER RESPONSES TO FIRST SETS OF
WRITTEN DISCOVERY

1 Defendant Johnson & Johnson ("Defendant") respectfully submits the following
 2 points and authorities in support of its Motion to Compel Further Responses to
 3 Defendant's First Set of Special Interrogatories, First Request for Production, First Set of
 4 Form Interrogatories, and First Set of Requests for Admissions.

5
 6 **I.**
INTRODUCTION

7 Plaintiffs named McKesson Corporation ("McKesson") as a defendant, and allege
 8 in their Complaint that Children's Motrin was distributed "throughout the United States
 9 through various distributors, including but not limited to McKesson" (Declaration
 10 of Benjamin J. Holl ("*Holl Dec.*") at Exhibit A (Plaintiff's Complaint) at ¶ 9.) Naming
 11 McKesson as a defendant defeats diversity among the parties, and is the sole basis for this
 12 case to be before this Court.

13 Defendant's first sets of written discovery focused, in large part, upon Plaintiffs'
 14 contention that the McKesson distributed the Children's Motrin at issue in this case, and
 15 is thus a proper party to this lawsuit. This issue directly affects whether this case is
 16 removable to federal court. Defendant sought information concerning McKesson's
 17 alleged distribution of Children's Motrin in Special Interrogatory numbers 12 -13 and 18-
 18 19, Request for Production numbers 3, 9, and 12, and Form Interrogatory number 17.1.
 19 Plaintiffs responded to this discovery with the bare assertion that "McKesson was and is
 20 the distributor of Children's Motrin to Wal-Mart," but did not provide any supporting
 21 facts or identify any evidence in support of this conclusion, and claimed that any further
 22 information or documents concerning McKesson's alleged distribution are protected from
 23 disclosure under the attorney work-product doctrine.

24 Plaintiffs have waived their objections, including their claims of work-product
 25 protection, by serving untimely responses to Defendant's discovery, and must provide
 26 this information. Defendants granted Plaintiffs an extension of time to serve responses
 27 until February 9, 2007, however, Plaintiffs emailed unsigned, unverified and un-served
 28 responses only on February 12. Defendant is prejudiced by Plaintiffs' refusal to provide

any details concerning their assertion that McKesson distributed Children's Motrin. Defendant is entitled to, and needs, the requested information concerning McKesson's alleged distribution of Children's Motrin to assess the claim that McKesson is a proper party to this lawsuit, and whether this case is removable.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiffs' Claims And The Discovery Sought By Defendant

On November 3, 2006, Plaintiffs filed their Complaint against defendants: Johnson & Johnson, McNeil Consumer Healthcare, a Division of McNeil-PPC, Inc. (erroneously sued as McNeil Consumer & Specialty Pharmaceuticals, a Division of McNeil-PPC, Inc.), McKesson, and Wal-Mart Stores, Inc. (*Holl Dec.*, Ex. A at ¶ 2). Plaintiffs claim that Thomas Gaines developed Stevens Johnson Syndrome ("SJS"), a rare, idiosyncratic disease and died as a result of his ingesting Children's Motrin. (*Id.* at ¶15). Plaintiffs allege, *inter alia*, that McKesson distributed the Children's Motrin. (*Id.* at ¶¶9 and 15). The Complaint asserts four cases of action: strict liability, negligence, breach of warranty, and wrongful death. (*Id.* at ¶¶16-47).

On January 3, 2007, Defendant served Plaintiffs with its First Sets of Special and Form Interrogatories, First Request for Production, and First Set of Requests for Admission. (*Holl Dec.*, at ¶3 and Exs. B-E). This discovery was focused, in part, on Plaintiffs' contention that McKesson distributed the Children's Motrin at issue in this case, and thus, whether it is a proper party to the lawsuit. This issue bears directly on whether this case is removable to federal court - McKesson's status as a defendant is the only basis for this case to be before this Court.

B. Plaintiffs' Untimely, Unsigned and Unverified Discovery Responses

Plaintiffs' responses to Defendant's discovery were due on February 7, 2007. (*Holl Dec.*, at ¶3). On February 6, Plaintiffs' counsel requested until February 9 to serve responses to this discovery, and Defendant granted that request. (*Id.* at ¶4 and Ex. F). On

February 12, Plaintiffs emailed Defendant their untimely responses. (*Id.* at ¶5 and Exs. G - K). These responses were unsigned and unverified, and without a proof of service, and despite being requested to, Plaintiffs have never provided Defendant with signed responses or verifications, or a proof of service. (*Id.* at ¶¶5-6 and Ex. L).

C. Defendant's Attempt To Meet and Confer In Good Faith With Plaintiffs

On March 8, 2007, Defendant's counsel wrote to Plaintiffs' counsel detailing the numerous deficiencies in Plaintiffs' discovery responses and explaining that Plaintiffs' boilerplate objections were improper. (*Holl Dec.*, at ¶6 and Ex. L). Defendant requested that Plaintiffs remedy the enumerated deficiencies in Plaintiffs' responses, including their failure to sign or verify the responses, or furnish a proof of service. (*Id.* and Ex. L). Plaintiffs did not respond to Defendant's attempt to meet and confer. (*Id.*). Consequently, Defendant had no choice but to file its motion to compel.

**III.
ARGUMENT**

Defendant may conduct discovery to ascertain whether certain Defendants are proper parties to this lawsuit. The rules of discovery have traditionally been broadly construed to permit discovery. *See, e.g., Greyhound Corp. v. Superior Court* (1961) 56 Cal. 2d 355, 377. All doubts concerning discovery should be resolved in favor of permitting the requested discovery. *Colonial Life & Accident Ins. Co. v. Superior Court* (1982) 31 Cal. 3d 785, 790. Such is the case because the scope of discovery permitted under the Code is broad and the Discovery Act is construed liberally in favor of disclosure. C.C.P. § 2017.010; *Emerson Elec. Co. v. Superior Court* (1997) 56 Cal. App. 4th 1101, 1107-1108 (citing *Greyhound Corp, supra*, 56 Cal. 2d at 377-378); *see also Irvington-Moore, Inc. v. Superior Court* (1993) 14 Cal. App. 4th 733, 739. When a party responds to discovery requests with objections or incomplete answers, the propounding party's only remedy is to seek a court order compelling further responses or answers. C.C.P. §§ 2030.300 and 2031.300.

1 **A. Plaintiffs' Responses To Defendant's Discovery Were Untimely, And**
 2 **Plaintiffs Have Therefore Waived Their Objections**

3 Plaintiffs' responses to Defendants' first sets of written discovery were originally
 4 due on February 7, 2007. (*Holl Dec.*, at ¶3). At Plaintiffs' request, Defendant agreed to
 5 extend the response date to February 9. (*Id.* at ¶4 and Ex. F). Not until February 12,
 6 however, did Plaintiffs email their discovery responses. (*Id.* at ¶5 and Ex. K). The
 7 responses were neither signed nor verified, and did not include a proof of service. (*Id.* at
 8 ¶5 and Exs. G-J).

9 As a result of Plaintiffs' untimely Responses, Plaintiffs have waived their
 10 objections to Defendant's written discovery, including their claims of attorney work-
 11 product protection. C.C.P. §§ 2030.290(a) (interrogatories), 2031.300(a) (requests for
 12 production), and 2033.280 (requests for admission); *Leach v. Superior Court* (1980) 111
 13 Cal.App.3d 902, 905-906. Defendant therefore requests that the Court deem all of
 14 Plaintiffs objections as waived, and order Plaintiffs to respond fully to Defendant's
 15 written discovery.

16 **B. Plaintiffs Should Be Ordered To Provide Signed And Verified Responses**

17 Plaintiffs have failed to provide signed or verified responses to Defendant's
 18 Special and Form Interrogatories, Request for Production, and Requests for Admission.
 19 (*Holl Dec.*, at ¶5 and Exs. B-E). Where a verification is required, an unverified response
 20 is the equivalent of no response at all. *Appleton v. Superior Court (Cook)* (1988) Cal.
 21 App. 3d 632, 636.

22 The Court should issue an order compelling Plaintiffs to provide signed and
 23 verified responses to Defendant's Special Interrogatories, Form Interrogatories, Request
 24 for Production, and Requests for Admission. *See* C.C.P. §§ 2030.250(a), (c)
 25 (interrogatories), 2031.250(a), (c) (request for production), and 2033.240(a), (c) (requests
 26 for admission).

C. Defendant's Motion To Compel Further Responses To Special Interrogatories And Form Interrogatories Should Be Granted As Plaintiffs Have Not Provided Meaningful Responses In Violation Of Code Of Civil Procedure §§ 2030.90 and 2030.300

Failure to respond to interrogatories, evasive responses, and objections lacking substantial justification are "misuses of the discovery process." C.C.P. 2023.10. A "party may not provide deftly worded conclusionary answers designed to evade a series of explicit questions." *Deyo v. Kilbourne* (1978) 84 Cal. App. 3d 771, 783. Moreover, putting aside that Plaintiffs have waived their objections to Defendant's discovery, generalized and boilerplate objections are insufficient and improper, and are grounds for a motion to compel. *Smith v. Superior Court* (1961) 189 Cal. App. 2d 6, 13; *Hernandez v. Superior Court* (2003) 112 Cal. App. 4th 285, 291-292; C.C.P. 2030.300(a)(3).

Plaintiffs alleged in their Complaint that McKesson is a proper party to this lawsuit, based on its alleged distribution and sale of Children's Motrin. (*Holl Dec.*, Ex. A at ¶9). As a result, Defendant has a right to discover the facts supporting Plaintiffs' contention. *See, e.g., Sheets v. Superior Court of Los Angeles County* (1967) 257 Cal. App. 2d 1, 8-9 ("there is no doubt that a defendant is entitled to discover by appropriate interrogatories the facts, if any, presently known to the plaintiff upon which he bases the allegations of his complaint and upon which he presently relies to prove his case"); *Citizens for Parental Rights v. San Mateo County Bd. of Educ.* (1975) 51 Cal. App. 3d 1, 37, citing to *Singer v. Superior Court* (1960) 54 Cal. 2d 318, ("it is perfectly proper for a party to submit an interrogatory requiring his adversary to specify, under oath, the facts on which he relies in support of a particular contention or allegation made in a pleading").

Plaintiffs provided boilerplate objections and bare, conclusionary assertions in response to Defendant's Special Interrogatories numbers 12-13 and 18-19 and Form Interrogatory number 17.1, all of which sought details concerning McKesson's alleged distribution of Children's Motrin. Specifically, Plaintiffs inserted a "cookie-cutter" work-product objection to each of these interrogatories, and then responded to each with

1 the same conclusionary assertion: "McKesson was and is the distributor of Children's
2 Motrin to Wal-Mart." These responses are incomplete, evasive and impermissibly
3 conclusory, and in violation of C.C.P. § 2030.300.

4 Plaintiffs assert in the Complaint that Children's Motrin is distributed "throughout
5 the United States through various distributors, including but not limited to McKesson . .
6 ." (see *Holl Dec.* Ex. A. at ¶9), but refuse to disclose *any* facts or evidence in support of
7 their contention that McKesson distributed the Children's Motrin at issue in this case, and
8 thus why McKesson is a proper party to this lawsuit and this case should remain in this
9 Court. The requested information is required to assess the claim that McKesson is a proper
10 party to this lawsuit, and whether this case is removable to federal court. Defendant is
11 entitled to the requested information, and is prejudiced without it.

12 The Court should issue an order compelling Plaintiffs to provide full, complete
13 and substantive responses to Defendants' Form and Special Interrogatories seeking facts
14 and evidence upon which Plaintiffs rely for their contention that McKesson distributed
15 the Children's Motrin at issue in this case.

16 **D. Defendant's Motion To Compel Further Responses To Request For**
17 **Production Should Be Granted As Plaintiffs Have Not Provided Full And**
18 **Complete Responses Or Produced Responsive Documents In Violation Of**
Code Of Civil Procedure §§ 2031.240 and 2031.310

19 Document requests seeking facts or documents relied upon by parties in support of
20 their contentions are commonplace and appropriate. See, e.g., *Burke v. Superior Court*
21 (1969) 71 Cal. 2d 276, 280-281; *Rifkind v. Superior Court* (1994) 22 Cal. App. 4th 1255,
22 1260-1261; and cases cited therein. Indeed, a party is entitled to discovery of the
23 opponent's contentions and their factual and evidentiary bases, notwithstanding the
24 underlying involvement of expert opinion or attorney analysis. *Ibid.*

25 Defendant's Request for Production numbers 3, 9, and 12 sought documents
26 related to Plaintiffs' contention that McKesson distributed Children's Motrin to Wal-
27 Mart. (*Holl Dec.*, ¶3 and Ex. C). Plaintiffs asserted their same "cookie-cutter" work-
28 product objections that they asserted for the interrogatories discussed above. Moreover,

1 Plaintiffs responded that "all responsive documents should be in the possession, custody
2 or control of Defendants."

3 Plaintiffs' responses are insufficient and frustrate the purpose of discovery.
4 Defendant is entitled to the production of responsive documents that Plaintiffs possess,
5 control or have in their custody. It is immaterial that the requested documents may, or
6 may not, be available from other sources, including Defendant itself. Plaintiffs must
7 specify with particularity what responsive documents Plaintiffs refer to that, in Plaintiffs
8 opinion, "should" be in the "possession, custody or control of Defendants."

9 The Court should issue an order compelling Plaintiffs to provide full, complete
10 and substantive responses to Defendants' Request for Production, and produce
11 documents responsive to requests related to Plaintiffs contention that McKesson
12 distributed Children's Motrin.

13 IV. 14 CONCLUSION

15 For the foregoing reasons, Defendant requests that its Motion to Compel be
16 granted.

17 Dated: March 29 2007

DRINKER BIDDLE & REATH LLP

18 
19 BENJAMIN J. HOLL

20 Attorneys for Defendants
21 JOHNSON & JOHNSON, MCNEIL
22 CONSUMER HEALTHCARE, a Division
23 of MCNEIL-PPC, INC. (erroneously sued
24 as MCNEIL CONSUMER & SPECIALTY
25 PHARMACEUTICALS, a Division of
26 MCNEIL-PPC, INC.), MCKESSON
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THOMAS B. GAINES, a deceased minor
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 interest; DIANA L. GAINES, individually,
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 GARY D. GAINES, individually and as
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 ESTATE OF THOMAS B. GAINES,

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 CORPORATION, a Delaware corporation;
 WAL-MART STORES, INC., a Delaware
 corporation; and DOES 1 through 100,
 inclusive,

Defendants.

Case No. CGC-06-457600

**DEFENDANT JOHNSON &
 JOHNSON'S SEPARATE STATEMENT
 OF ITEMS IN DISPUTE IN SUPPORT
 OF MOTION TO COMPEL FURTHER
 RESPONSES TO FIRST SET OF
 SPECIAL INTERROGATORIES,
 FIRST REQUEST FOR PRODUCTION,
 FIRST SET OF FORM
 INTERROGATORIES, AND FIRST
 SET OF REQUESTS FOR
 ADMISSIONS**

Date: May 7, 2007
 Time: 10:30 a.m.
 Place: Department 610
 Judge: Commissioner Bruce E. Chan

Complaint Filed: November 3, 2006

///

COMES NOW Defendant Johnson & Johnson ("Defendant") and submits this California Rules of Court, Rule 3.1020, Separate Statement of Items in Dispute in support of its motion to compel further answers from Plaintiffs to the following discovery requests:

I.
PLAINTIFFS' RESPONSES TO SPECIAL INTERROGATORIES, SET ONE

Plaintiffs did not serve signed and verified response to Defendant's First Set of Special Interrogatories as required by C.C.P. § 2030.250(a), (c). The Court should issue an order compelling Plaintiffs to do so.

Special Interrogatory No. 12:

Set forth all facts upon which YOU rely for YOUR contention that MCKESSON is a proper party to this lawsuit.

(For purposes of this set of interrogatories, "MCKESSON" means McKesson Corporation and any subsidiary or division thereof.)

Plaintiffs' Response to Special Interrogatory No. 12:

Objection: This interrogatory seeks plaintiffs' counsel's work product, legal reasoning, theory, and/or statutory basis supporting a factual contention.

Without waiving this objection, plaintiffs state that MCKESSON was and is the distributor of CHILDREN'S MOTRIN to WAL-MART.

Discovery is ongoing and plaintiffs reserve the right to supplement this response.

Defendant's Reasons to Compel Further Response to Special Interrogatory No. 12:

Plaintiffs' objections to Special Interrogatory number 12 are waived because Plaintiffs did not serve timely discovery responses. (Declaration of Benjamin J. Holl ("*Holl Dec.*"), at ¶¶ 4-5 and Ex. K; C.C.P. § 2030.290(a)). Plaintiffs must disclose the purported work-product that relates to why they believe McKesson is a proper party to this lawsuit. *Id.*; *Leach v. Superior Court* (1980) 111 Cal. App. 3d 902, 905-906.

Substantively, Plaintiffs' response to this Interrogatory is conclusory, evasive, and

1 incomplete. Plaintiffs contend in their Complaint that McKesson is a proper party to this
 2 lawsuit based on its alleged distribution and sale of Children's Motrin. (*See Holl Dec.*,
 3 Ex. A at ¶¶2, 9). Defendant is entitled to learn facts upon which Plaintiffs base the
 4 contentions in their Complaint. *See, e.g., Sheets v. Superior Court of Los Angeles County*
 5 (1967) 257 Cal. App. 2d 1, 8-9 ("there is no doubt that a defendant is entitled to discover
 6 by appropriate interrogatories the facts, if any, presently known to the plaintiff upon
 7 which he bases the allegations of his complaint and upon which he presently relies to
 8 prove his case"); *Citizens for Parental Rights v. San Mateo County Bd. of Educ.* (1975)
 9 51 Cal. App. 3d 1, 37, citing *Singer v. Superior Court* (1960) 54 Cal. 2d 318 ("it is
 10 perfectly proper for a party to submit an interrogatory requiring his adversary to specify,
 11 under oath, the facts on which he relies in support of a particular contention or allegation
 12 made in a pleading").

13 Defendant needs the requested information to assess the claim that McKesson is a
 14 proper party to this lawsuit, and whether this case is removable to federal court. The only
 15 basis for this case being before this Court is McKesson's status as a defendant. Plaintiffs
 16 assert in the Complaint that Children's Motrin is distributed "throughout the United
 17 States through various distributors, including but not limited to McKesson . . ." (*see*
 18 *Holl Dec. Ex. A. at ¶9*), but refuse to disclose *any* facts or evidence in support of their
 19 contention that McKesson distributed the Children's Motrin at issue in this case, and thus
 20 why McKesson is a proper party to this lawsuit and this case should remain in this Court.
 21 Plaintiffs instead simply reiterate their bare conclusion that "McKesson was and is the
 22 distributor of Children's Motrin to Wal-Mart." (*See, e.g., Holl Dec. Ex. G at response*
 23 *number 12.*)

24 Plaintiffs must provide all facts upon which they "rely for [their] contention" that
 25 McKesson is a proper party to this lawsuit. The bare assertion that McKesson "was and
 26 is" the distributor of Children's Motrin is wholly insufficient. A "party may not provide
 27 deftly worded conclusionary answers designed to evade a series of explicit questions."
 28

1 *Deyo v. Kilbourne* (1978) 84 Cal. App. 3d 771, 783.

2 The Court should issue an order compelling Plaintiffs to furnish Defendant with a
3 full, complete and substantive response to this Interrogatory.

4 **Special Interrogatory No. 13:**

5 Describe all EVIDENCE supporting YOUR contention that MCKESSON is a
6 proper party to this lawsuit.

7 (For the purposes of this set of interrogatories, "EVIDENCE" means all
8 DOCUMENTS, testimony, or statements made from personal knowledge of any potential
9 witness. For the purposes of this set of interrogatories, "DOCUMENTS" means written,
10 printed, typed, or visually or orally reproduced material of any kind, whether or not
11 privileged, including but not limited to any and all letters, correspondence, contracts,
12 agreements, bills, orders, receipts, invoices, statements, records [including but not limited
13 to medical records], books, articles, computer tapes and reports, press releases,
14 advertising and promotional literature, prints, drawings, plans, photographs, printed
15 forms, manuals, brochures, lists, publications, videotapes, or other tape recordings, films,
16 microfilm, and all other writings, including drafts, typings, printings, minutes or copies or
17 reproductions thereof in the possession, custody, or control of YOU.)

18 **Plaintiffs' Response to Special Interrogatory No. 13:**

19 Objection: This interrogatory seeks plaintiff's counsel's work product, legal
20 reasoning, theory, and/or statutory basis supporting a factual contention.

21 Without waiving this objection, plaintiff states that MCKESSON was and is the
22 distributor of CHILDREN'S MOTRIN to WAL-MART.

23 Discovery is ongoing and plaintiffs reserve the right to supplement this response.

24 **Defendant's Reasons to Compel Further Response to Special Interrogatory No. 13:**

25 Please see the reasons set forth above with respect to Interrogatory No. 12.

26 **Special Interrogatory No. 18:**

27 Set forth the facts upon which YOU rely for YOUR contention that the
28

CHILDREN'S MOTRIN was sold by MCKESSON.

Plaintiffs' Response to Special Interrogatory No. 18:

Objection: This interrogatory seeks plaintiffs' counsel's work product, legal reasoning, theory, and/or statutory basis supporting a factual contention.

Without waiving this objection, plaintiffs state that MCKESSON was and is the distributor of CHILDREN'S MOTRIN to WAL-MART.

Discovery is ongoing and plaintiffs reserve the right to supplement this response.

Defendant's Reasons to Compel Further Response to Special Interrogatory No. 18:

Please see the reasons set forth above with respect to Interrogatory No. 12.

Special Interrogatory No. 19:

Describe all EVIDENCE supporting YOUR contention that the CHILDREN'S MOTRIN was sold by MCKESSON.

Plaintiffs' Response to Special Interrogatory No. 19:

Objection: This interrogatory seeks plaintiffs' counsel's work product, legal reasoning, theory, and/or statutory basis supporting a factual contention.

Without waiving this objection, plaintiffs state that MCKESSON was and is the distributor of CHILDREN'S MOTRIN to WAL-MART.

Discovery is ongoing and plaintiffs reserve the right to supplement this response.

Defendant's Reasons to Compel Further Response to Special Interrogatory No. 19:

Please see the reasons set forth above with respect to Interrogatory No. 12.

II.
PLAINTIFFS' RESPONSES TO FIRST REQUEST FOR PRODUCTION

Plaintiffs did not serve signed and verified response to Defendant's First Request for Production as required by C.C.P. § 2031.250(a), (c). The Court should issue an order compelling Plaintiffs to do so.

Request for Production No. 3:

All DOCUMENTS that evidence the distribution of the CHILDREN'S MOTRIN

1 by a DISTRIBUTOR.

2 (The term "DISTRIBUTOR" is used in these requests as it is used in Paragraph 9
3 of the COMPLAINT.)

4 **Plaintiffs' Response to Request for Production No. 3:**

5 Objection: This request seeks plaintiffs' counsel's work product, legal reasoning,
6 theory, and/or statutory basis supporting a factual contention. Further, all responsive
7 DOCUMENTS should be in the possession, custody or control of Defendants.

8 **Defendant's Reasons to Compel Further Response to Request for Prod. No. 3:**

9 Defendant preliminarily notes that, in a good faith effort to avoid this motion to
10 compel, Defendant re-worded Request No. 3 in its meet and confer letter to Plaintiffs as
11 follows:

12 **Request No. 3:** Please produce all DOCUMENTS *in your possession* that evidence
13 the distribution of the CHILDREN'S MOTRIN by a DISTRIBUTOR.

14 Plaintiffs, however, have not responded to Defendant's meet and confer letter or
15 its modified Request for Production number 3. (*Holl Dec.*, at ¶6). In any event, the
16 requested documents are discoverable, and Defendant is entitled to them.

17 As discussed, Plaintiffs' objections to Defendant's First Request for Production
18 are waived because Plaintiffs did not serve timely responses. (*Holl Dec.*, at ¶¶ 4-5 and
19 Ex. K; C.C.P. § 2031.300(a)).

20 Moreover, document requests seeking facts or documents relied upon by parties in
21 support of their contentions are commonplace and appropriate. *See, e.g., Burke v.*
22 *Superior Court* (1969) 71 Cal. 2d 276, 280-281; *Rifkind v. Superior Court* (1994) 22 Cal.
23 App. 4th 1255, 1260-1261; and cases cited therein. A party is entitled to discovery of the
24 opponent's contentions and their factual and evidentiary bases, notwithstanding the
25 underlying involvement of expert opinion or attorney analysis. *Ibid.*

26 Plaintiffs' response to Request number 3 is insufficient and frustrates the purpose
27 of discovery. They contend in their Complaint that Children's Motrin was distributed
28

1 “throughout the United States through various distributors, including but not limited to
 2 McKesson . . .” (*Holl Dec.*, Ex. A at ¶9). Yet, Plaintiffs refuse to produce any
 3 documents that evidence the distribution of Children’s Motrin by any distributor, let
 4 alone McKesson. Defendant is entitled to learn what documents Plaintiffs possess,
 5 control or have in their custody that relates to this issue. It is immaterial that the
 6 requested documents may, or may not, be available from other sources, including
 7 Defendant itself. Plaintiffs must also specify with particularity what responsive
 8 documents Plaintiffs refer to that in Plaintiffs opinion “should” be in the “possession,
 9 custody or control of Defendants.”

10 **Request for Production No. 9:**

11 All DOCUMENTS supporting YOUR contention that MCKESSON is a proper
 12 party to this lawsuit.

13 (For the purposes of this set of requests, “MCKESSON” means McKesson
 14 Corporation and any subsidiary or division thereof.)

15 **Plaintiffs’ Response to Request for Production No. 9:**

16 Objection: This request seeks plaintiffs’ counsel’s work product, legal reasoning,
 17 theory, and/or statutory basis supporting a factual contention. Further, all responsive
 18 DOCUMENTS should be in the possession, custody or control of Defendants.

19 **Defendant’s Reasons to Compel Further Response to Request for Prod. No. 9:**

20 Defendant preliminarily notes that, in a good faith effort to avoid this motion to
 21 compel, Defendant re-worded Request No. 9 in the meet and confer letter Defendant sent
 22 to Plaintiffs as follows:

23 **Request No. 9:** Please produce all DOCUMENTS *relied on for* YOUR contention
 24 that MCKESSON is a proper party to this lawsuit.

25 Plaintiffs, however, have not responded to Defendant’s meet and confer letter or
 26 its modified Request for Production number 9. (*Holl Dec.*, at ¶6). The requested
 27 documents are discoverable, and Defendant is entitled to them.

1 Please see the reasons set forth above with respect to Request No. 3, and with
2 respect to Interrogatory No. 12.

3 **Request for Production No. 12:**

4 All DOCUMENTS supporting YOUR contention that the CHILDREN'S
5 MOTRIN was sold by MCKESSON.

6 **Plaintiffs' Response to Request for Production No. 12:**

7 Objection: This interrogatory seeks plaintiffs' counsel's work product, legal
8 reasoning, theory, and/or statutory basis supporting a factual contention. Further, all
9 responsive DOCUMENTS should be in the possession, custody or control of Defendants.

10 **Defendant's Reasons to Compel Further Response to Request for Prod. No. 12:**

11 Defendant preliminarily notes that, in a good faith effort to avoid this motion to
12 compel, Defendant re-worded Request No. 12 in the meet and confer letter Defendant
13 sent to Plaintiffs as follows:

14 **Request No. 12:** Please produce all DOCUMENTS *relied on for* YOUR
15 contention that the Children's Motrin was sold by MCKESSON.

16 Plaintiffs, however, have not responded to Defendant's meet and confer letter or
17 its modified Request for Production number 12. (*Holl Dec.*, at ¶6). The requested
18 documents are discoverable, and Defendant is entitled to them.

19 Please see the reasons set forth above with respect to Request No. 3, and with
20 respect to Interrogatory No. 12.

21 **III.**
22 **PLAINTIFFS' RESPONSES TO FORM INTERROGATORIES, SET ONE**

23 Plaintiffs did not serve signed and verified response to Defendant's First Set of
24 Form Interrogatories as required by C.C.P. § 2030.260(a), (c). The Court should issue an
25 order compelling Plaintiffs to do so.

26 **Form Interrogatory No. 17.1:**

27 Is your response to each request for admission served with these interrogatories an
28 unqualified admission? If not, for each response that is not an unqualified admission:

- 1 (a) state the number of the request;
- 2 (b) state all facts upon which you base your response;
- 3 (c) state the names, ADDRESSES, and telephone numbers of all PERSONS
- 4 who have knowledge of those facts; and
- 5 (d) identify all DOCUMENTS and other tangible things that support your
- 6 response and state the name, ADDRESS, and telephone number of the PERSON who has
- 7 each DOCUMENT or thing.

8 **Plaintiffs' Response to Form Interrogatory No. 17.1:**

9 No.

- 10 (a) Requests No. One and No. Two;
- 11 (b) Plaintiffs purchased the CHILDREN'S MOTRIN from WAL-MART;
- 12 (c) Plaintiffs;
- 13 (d) Despite a diligent search and reasonable inquiry, plaintiffs are unable to
- 14 identify any DOCUMENTS in their possession which would be responsive to this
- 15 request.

- 16 (a) Requests No. Three and No. Four;
- 17 (b)(c)(d) Objection: This interrogatory seeks plaintiffs' counsel's work product,
- 18 legal reasoning, theory, and/or statutory basis supporting a factual contention.

19 **Defendant's Reasons to Compel Further Response to Form Interrogatory No. 17.1:**

20 In response to Requests for Admission numbers 3 and 4, Plaintiffs deny,

21 respectively, that the Children's Motrin at issue in this case was not sold by McKesson

22 and that the Plaintiffs have no evidence of any such sale. (*See Holl Dec. Ex. I* at response

23 numbers 3 and 4). Plaintiffs object to providing details concerning these denials in Form

24 Interrogatory No. 17.1 on the basis that the interrogatory seeks protected information.

25 Please see the reasons set forth above with respect to Interrogatory No. 12.

26 Defendant is entitled to learn the facts upon which Plaintiffs' denials were made, the

27 identity of the people with knowledge of the facts, and documents supporting the denial.

28

identity of the people with knowledge of the facts, and documents supporting the denial.

IV.

PLAINTIFFS' RESPONSES TO REQUESTS FOR ADMISSION, SET ONE

Plaintiffs did not serve signed and verified response to Defendant's First Set of Requests for Admission as required by C.C.P. § 2033.240(a), (c). The Court should issue an order compelling Plaintiffs to do so.

Dated: March 29, 2007

DRINKER BIDDLE & REATH LLP

B. Holl

BENJAMIN J. HOLL

Attorneys for Defendants
JOHNSON & JOHNSON, MCNEIL
CONSUMER HEALTHCARE, a Division
of MCNEIL-PPC, INC. (erroneously sued
as MCNEIL CONSUMER & SPECIALTY
PHARMACEUTICALS, a Division of
MCNEIL-PPC, INC.), MCKESSON
CORPORATION, and WAL-MART
STORES, INC.

05/04/2007 10:39 FAX

PLEA

COPY TWO

002/004

PDF TEAM

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THOMAS W. PULLIAM, JR. (State Bar No. 46322)
BENJAMIN J. HOLL (State Bar No. 200630)
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Attorneys for Defendants
JOHNSON & JOHNSON, MCNEIL CONSUMER
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(erroneously sued as MCNEIL CONSUMER &
SPECIALTY PHARMACEUTICALS,
a Division of MCNEIL-PPC, INC.), MCKESSON
CORPORATION, and WAL-MART STORES, INC.

ENDORSED
FILED

San Francisco Superior Court

MAY 04 2007

JOHNNY FARRER, Clerk

ROSSALY DELAVEGA

Plaintiff Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

THOMAS B. GAINES, a deceased minor
child by and through his personal
representative(s) and/or successor(s) in
interest; DIANA L. GAINES, individually,
as Executor of the Estate of Thomas B.
Gaines, and as Thomas B. Gaines' personal
representative and successor in interest;
GARY D. GAINES, individually and as
Thomas B. Gaines' personal representative
and successor in interest; and THE
ESTATE OF THOMAS B. GAINES,

Plaintiffs,

v.

JOHNSON & JOHNSON, a New Jersey
corporation; MCNEIL CONSUMER &
SPECIALTY PHARMACEUTICALS, a
Division of MCNEIL-PPC, INC., a New
Jersey corporation; MCKESSON
CORPORATION, a Delaware corporation;
WAL-MART STORES, INC., a Delaware
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No. CGC-06-457600

DEFENDANT JOHNSON &
JOHNSON'S NOTICE OF TAKING
MOTION TO COMPEL DISCOVERY
OFF CALENDAR

Date: May 7, 2007
Time: 10:30 a.m.
Place: Department 610
Judge: Commissioner Bruce E. Chan

BY FAX

Complaint Filed: November 3, 2006

DRINKER BIDDLE & REATH LLP
50 Fremont Street, 20th Floor
San Francisco, CA 94105

SF1383610V1

DEFENDANT'S NOTICE OF TAKING MOTION TO COMPEL DISCOVERY OFF CALENDAR

10948765.61 - 5/4/2007 10:41:36 AM

CHARLES F. PREUSS (State Bar No. 45783)
 THOMAS W. PULLIAM, JR. (State Bar No. 46322)
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 DRINKER BIDDLE & REATH LLP
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ENDORSED
 FILED
 San Francisco County Superior Court

MAR 29 2007

GORDON PARK-LI, Clerk
 BY: BERNADETTE THOMPSON
 Deputy Clerk

Attorneys for Defendants
 JOHNSON & JOHNSON, MCNEIL CONSUMER
 HEALTHCARE, a Division of MCNEIL-PPC, INC.
 (erroneously sued as MCNEIL CONSUMER &
 SPECIALTY PHARMACEUTICALS,
 a Division of MCNEIL-PPC, INC.), MCKESSON
 CORPORATION, and WAL-MART STORES, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SAN FRANCISCO

THOMAS B. GAINES, a deceased minor
 child by and through his personal
 representative(s) and/or successor(s) in
 interest; DIANA L. GAINES, individually,
 as Executor of the Estate of Thomas B.
 Gaines, and as Thomas B. Gaines' personal
 representative and successor in interest;
 GARY D. GAINES, individually and as
 Thomas B. Gaines' personal representative
 and successor in interest; and THE
 ESTATE OF THOMAS B. GAINES,

Plaintiffs,

v.

JOHNSON & JOHNSON, a New Jersey
 corporation; MCNEIL CONSUMER &
 SPECIALTY PHARMACEUTICALS, a
 Division of MCNEIL-PPC, INC., a New
 Jersey corporation; MCKESSON
 CORPORATION, a Delaware corporation;
 WAL-MART STORES, INC., a Delaware
 corporation; and DOES 1 through 100,
 inclusive,

Defendants.

Case No. CGC-06-457600

**DECLARATION OF BENJAMIN J.
 HOLL IN SUPPORT OF DEFENDANT
 JOHNSON & JOHNSON'S MOTION
 TO COMPEL FURTHER RESPONSES
 TO FIRST SET OF SPECIAL
 INTERROGATORIES, FIRST
 REQUEST FOR PRODUCTION, FIRST
 SET OF FORM INTERROGATORIES,
 AND FIRST SET OF REQUESTS FOR
 ADMISSIONS**

Date: May 7, 2007
 Time: 10:30 a.m.
 Place: Department 610
 Judge: Commissioner Bruce E. Chan

Complaint Filed: November 3, 2006

///

COPY

1 I, BENJAMIN J. HOLL, declare that:

2 1. I am an attorney licensed to practice in the State of California and an
3 associate with the law firm of Drinker Biddle & Reath LLP, counsel of record for
4 defendant Johnson & Johnson ("Defendant"). This declaration is based upon review of
5 files and my personal knowledge of the facts set forth below.

6 2. Attached hereto as Exhibit A is a true and correct copy of Plaintiffs'
7 Complaint.

8 3. On January 3, 2007, Defendant served on Plaintiffs its First Set of Special
9 Interrogatories (a true and correct copy of which is attached hereto as Exhibit B), First
10 Request for Production (a true and correct copy of which is attached hereto as Exhibit C),
11 First Set of Requests for Admission (a true and correct copy of which is attached hereto
12 as Exhibit D), and First Set of Form Interrogatories (a true and correct copy of which is
13 attached hereto as Exhibit E). Plaintiffs' responses to this discovery were due on
14 February 7, 2007.

15 4. On February 6, Plaintiffs' requested an extension until February 9, 2007 to
16 serve responses to Defendant's discovery requests. A true and correct copy of Plaintiffs'
17 letter requesting a continuance is attached hereto as Exhibit F. Defendant granted a
18 continuance until February 9.

19 5. On February 12, 2007, Plaintiffs emailed their untimely Response to
20 Special Interrogatories, Set One (a true and correct copy of which is attached hereto as
21 Exhibit G), Response to Requests for Production, Set One (a true and correct copy of
22 which is attached hereto as Exhibit H), Response to Requests for Admission, Set One (a
23 true and correct copy of which is attached hereto as Exhibit I), and Response to Form
24 Interrogatories, Set One (a true and correct copy of which is attached hereto as Exhibit J).
25 A true and correct copy of the email attaching Plaintiffs' Responses is attached hereto as
26 Exhibit K. The Responses were neither signed nor verified, and despite Defendant's
27 request (*see* Exhibit L, *infra*), Plaintiffs have never provided Defendant with signed
28

1 responses or verifications.

2 6. On March 8, 2007, I sent a letter to Plaintiffs' counsel detailing the
3 numerous deficiencies in Plaintiffs' responses and explaining that Plaintiffs' boilerplate
4 objections were improper. The letter requested that Plaintiff remedy the enumerated
5 deficiencies in Plaintiffs' responses and provide signed and verified responses by March
6 19. A true and correct copy of my March 8, 2007 letter is attached hereto as Exhibit L.
7 As of the date of this declaration, Plaintiffs have not responded to my letter. Plaintiffs
8 have also not provided further discovery responses, signed or verified responses, or a
9 proof of service.

10
11 I declare under penalty of perjury under the laws of the State of California that the
12 foregoing is true and correct.

13 Executed on March 29, 2007, in San Francisco, California.

14 
15 _____
16 BENJAMIN J. HOLL

EXHIBIT A

From: unknown Page: 5/6 Date: 11/3/2006 2:50:35 PM

GREENE BROILLET & WHEELER, LLP
LAWYERS
100 WILSHIRE BOULEVARD, SUITE 2100
P.O. BOX 2131
SANTA MONICA, CALIFORNIA 90407-2131
TEL. (310) 578-1200
FAX. (310) 578-1220

BROWNE GREENE, State Bar No. 38441
MICHAEL J. AVENATTI, State Bar No. 206929

Attorneys for Plaintiffs

ENDORSED
FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT

2006 NOV -3 AM 10:17
(SPACE BELOW FOR FILING STAMP ONLY)

GORDON PARK - LI. CLERK

Deborah Steppe

BY: DEPUTY CLERK

CASE MANAGEMENT CONFERENCE SET

APR 06 2007 -9 AM

DEPARTMENT 212

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

THOMAS B. GAINES, a deceased minor
child by and through his personal
representative(s) and/or successor(s) in
interest; DIANA L. GAINES, individually, as
Executor of the Estate of Thomas B. Gaines,
and as Thomas B. Gaines' personal
representative and successor in interest;
GARY D. GAINES, individually and as
Thomas B. Gaines' personal representative
and successor in interest; and THE ESTATE
OF THOMAS B. GAINES,

Plaintiffs,

vs.

JOHNSON & JOHNSON, a New Jersey
corporation; MCNEIL CONSUMER &
SPECIALTY PHARMACEUTICALS, a
Division of MCNEIL-PPC, INC., a New
Jersey corporation; MCKESSON
CORPORATION, a Delaware corporation;
WAL-MART STORES, INC., a Delaware
corporation; and DOLS 1 through 100,
inclusive,

Defendants.

CASE NO. CGC-06-457600

COMPLAINT FOR DAMAGES

1. Strict Product Liability/Personal Injury
2. Negligence/Personal Injury
3. Breach of Express and Implied Warranties/Personal Injury
4. Wrongful Death

DEMAND FOR JURY TRIAL

(Joint Declaration of Diana L. Gaines and
Gary D. Gaines filed concurrently
herewith)

1 COME NOW Plaintiffs THOMAS B. GAINES, a deceased minor child by and through his
 2 personal representative(s) and/or successor(s) in interest; DIANA L. GAINES, individually, as
 3 Executor of the Estate of Thomas B. Gaines, and as Thomas B. Gaines' personal representative and
 4 successor in interest; GARY D. GAINES, individually and as Thomas B. Gaines' personal
 5 representative and successor in interest; and THE ESTATE OF THOMAS B. GAINES, and for causes
 6 of action against Defendants JOHNSON & JOHNSON; MCNEIL CONSUMER & SPECIALTY
 7 PHARMACEUTICALS, a Division of MCNEIL-PPC, INC.; MCKESSON CORPORATION; WAL-
 8 MART STORES, INC.; and DOES 1 through 100, inclusive, and each of them, complain and allege
 9 as follows:

10 11 GENERAL ALLEGATIONS

12
13 1. At all times mentioned herein, Plaintiffs THOMAS B. GAINES, DIANA L. GAINES,
 14 and GARY D. GAINES were residents of Lincoln County, North Carolina.

15
16 2. At all times mentioned herein, Plaintiffs DIANA L. GAINES and GARY D. GAINES
 17 were the parents of THOMAS B. GAINES and, by operation of law, are presently the heirs of Plaintiff
 18 THOMAS B. GAINES. Additionally, Plaintiff DIANA L. GAINES is the Executor of the ESTATE
 19 OF THOMAS B. GAINES and Thomas B. Gaines' personal representative and successor in interest.
 20 Further, Plaintiff GARY D. GAINES is Thomas B. Gaines' personal representative and successor in
 21 interest.

22
23 3. The true names and/or capacities, whether individual, corporate, associate or
 24 otherwise of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiffs at this time, who
 25 therefore sue said Defendants by such fictitious names. Plaintiffs are informed and believe and
 26 thereupon allege that each of the Defendants fictitiously named herein as a DOE is legally responsible,
 27 negligently or in some other actionable manner, for the events and happenings hereinafter referred to,
 28 and thereby proximately caused the injuries and damages to Plaintiffs as hereinafter alleged. The

1 Plaintiffs will ask leave of court to amend this Complaint to insert the true names and/or capacities
2 of such fictitiously named Defendants when the same have been ascertained.

3
4 4. Plaintiffs are informed and believe, and thereupon allege, that at all times mentioned
5 herein, Defendants, including DOES 1 through 100, inclusive and each of them, were the agents,
6 servants, employees and/or joint venturers of their co-defendants, and each was, as such, acting within
7 the course, scope and authority of said agency, employment and/or venture, and with the authorization
8 and/or ratification of said co-defendants, and that each and every Defendant, as aforesaid, when acting
9 as a principal, was negligent in the selection and hiring of each and every other Defendant as an agent,
10 employee and/or joint venturer.

11
12 5. Plaintiffs are informed and believe, and thereupon allege, that Defendant JOHNSON
13 & JOHNSON (NYSE: JNJ) is, and at all times herein relevant was, a New Jersey corporation with its
14 principal place of business in New Brunswick, New Jersey. Plaintiffs are further informed and
15 believe, and thereupon allege, that Defendant JOHNSON & JOHNSON ("J&J") is authorized to do,
16 has regularly done, and is doing, business within the County of San Francisco, California and Lincoln
17 County, North Carolina.

18
19 6. Plaintiffs are informed and believe, and thereupon allege, that Defendant MCNEIL
20 CONSUMER & SPECIALTY PHARMACEUTICALS, a Division of MCNEIL-PPC, INC., is, and
21 at all times herein relevant was, a New Jersey corporation with its principal place of business in Fort
22 Washington, Pennsylvania, and a wholly owned subsidiary of J&J. Plaintiffs are further informed
23 and believe, and thereupon allege, that Defendant MCNEIL CONSUMER & SPECIALTY
24 PHARMACEUTICALS, a Division of MCNEIL-PPC, INC., ("MCNEIL") is authorized to do, has
25 regularly done, and is doing, business within the County of San Francisco, California and Lincoln
26 County, North Carolina.

1 7. Plaintiffs are informed and believe, and thereupon allege, that Defendant
2 MCKESSON CORPORATION (NYSE: MCK) is, and at all times herein relevant was, a Delaware
3 corporation with its principal place of business in San Francisco, California. Plaintiffs are further
4 informed and believe, and thereupon allege, that Defendant MCKESSON CORPORATION
5 ("MCKESSON") is authorized to do, has regularly done, and is doing, business within the County of
6 San Francisco, California and Lincoln County, North Carolina.

7
8 8. Plaintiffs are informed and believe, and thereupon allege, that Defendant WAL-
9 MART STORES, INC. is, and at all times herein relevant was, a Delaware corporation with its
10 principal place of business in Bentonville, Arkansas. Plaintiffs are further informed and believe, and
11 thereupon allege, that Defendant WAL-MART STORES, INC. ("WAL-MART") is authorized to do,
12 has regularly done, and is doing, business within the County of San Francisco, California and Lincoln
13 County, North Carolina.

14
15 9. At all times herein relevant, Defendants MCNEIL and J&J were in the business of
16 designing, manufacturing, marketing, distributing and selling an over-the-counter ("OTC")
17 nonsteroidal anti-inflammatory analgesic drug called Children's Motrin, generic name ibuprofen,
18 ("Children's Motrin") to consumers and users in California, North Carolina and throughout the United
19 States through various distributors, including but not limited to MCKESSON, and various retailers,
20 including but not limited to WAL-MART.

21
22 10. At all times herein relevant, Defendant MCNEIL was primarily responsible for
23 manufacturing and distributing Children's Motrin under the direction and control of J&J.

24
25 11. On or about September 28, 2004, Plaintiff THOMAS B. GAINES, then a three-year-
26 old male child with no known drug allergies, was stung by a bee. He was subsequently given
27 Children's Motrin drops (labeled "Ibuprofen Oral Suspension - Fever Reducer/Pain Reliever") in
28 accordance with the materials and instructions included with the drug.

GREENE BROILLET & WHEELER, LLP
P.O. BOX 2131
SANTA MONICA, CA 90407-2131

GREENE BROILLET & WHEELER, LLP
P.O. BOX 2131
SANTA MONICA, CA 90407-2131

12. On or about September 29, 2004, Plaintiff THOMAS B. GAINES developed a high fever, a pink color in his eyes, a skin rash, and a swollen mouth. After being examined by his pediatrician on September 29, 2004 and September 30, 2004, he was hospitalized at Gaston Memorial Hospital. He was subsequently transferred to the University of North Carolina Chapel Hill on or about November 1, 2004.

13. Plaintiff THOMAS B. GAINES was later diagnosed with Stevens-Johnson Syndrome.

14. After enduring days of pain and suffering, on November 12, 2004, THOMAS B. GAINES suffered an excruciating death from Stevens-Johnson Syndrome while hospitalized at the University of North Carolina Chapel Hill.

15. Following Thomas' death, Plaintiffs DIANA L. GAINES and GARY D. GAINES learned that (a) Thomas developed Stevens-Johnson Syndrome as a result of ingesting the Children's Motrin (the "CHILDREN'S MOTRIN"), which was designed, manufactured, marketed, distributed and sold OTC by Defendants J&J, MCNEIL, MCKESSON, WAL-MART and DOES 1 through 100, inclusive and (b) that Defendants J&J, MCNEIL, MCKESSON, WAL-MART and DOES 1 through 100, inclusive, had engaged in the conduct set forth below. Prior to this time, Plaintiffs had no reason to know, suspect or believe that (1) Defendants J&J, MCNEIL, MCKESSON, WAL-MART and DOES 1 through 100, inclusive, were negligent or responsible for the damages or death described herein; (2) any negligent or wrongful cause for the damages or death described herein existed; or (3) the injuries and death suffered by Thomas were connected to Children's Motrin or the conduct of the Defendants described herein.

FIRST CAUSE OF ACTION

(Strict Products Liability/Personal Injury)

COME NOW Plaintiffs THOMAS B. GAINES, a deceased minor child by and through his personal representative(s) and/or successor(s) in interest; DIANA L. GAINES, individually, as

1 Executor of the Estate of Thomas B. Gaines, and as Thomas B. Gaines' personal representative and
2 successor in interest; GARY D. GAINES, individually and as Thomas B. Gaines' personal
3 representative and successor in interest; and THE ESTATE OF THOMAS B. GAINES, and for a First
4 Cause of Action against Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1
5 through 100, inclusive, and each of them, complain and allege as follows:

6
7 16. Plaintiffs re-allege as though fully set forth at length, and incorporate herein by
8 reference, all of the allegations and statements contained in paragraphs 1 through 15, inclusive, of the
9 General Allegations above.

10
11 17. At all times mentioned herein, Defendants J&J; MCNEIL; MCKESSON; WAL-
12 MART; and DOES 1 through 100, inclusive, and each of them, by and through their officers, directors,
13 employees and/or managing agents, were the manufacturers, fabricators, designers, assemblers, testers,
14 distributors, sellers, inspectors, marketers, warranters, and/or advertisers of the CHILDREN'S
15 MOTRIN, which contained design and/or manufacturing defects, and which was capable of causing,
16 and in fact, did cause personal injuries to the users and consumers thereof, while being used in a
17 manner reasonably foreseeable, thereby rendering same unsafe and dangerous for use by the consumer
18 and user. Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100,
19 inclusive, by and through their officers, directors, employees and/or managing agents, also failed to
20 provide adequate warnings or instructions to the medical community, consumers and users of the
21 CHILDREN'S MOTRIN concerning the risk of Stevens-Johnson Syndrome, Toxic Epidermal
22 Necrolysis and other serious adverse reactions associated with the use of the CHILDREN'S MOTRIN
23 even though Defendants: 1) knew and had known about the connection between the drug and these
24 severe, potentially fatal reactions since the late 1980's; 2) knew and had known the medical literature
25 for years had shown a connection between Stevens-Johnson Syndrome/Toxic Epidermal Necrolysis
26 and the drug; 3) knew from their own clinical trials of Children's Motrin that the drug caused cases
27 of Stevens-Johnson Syndrome/Toxic Epidermal Necrolysis; and 4) had warned about Stevens-Johnson
28

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1 Syndrome/Toxic Epidermal Necrolysis in their drug package insert for the prescription form of the
2 drug before Children's Motrin began being distributed OTC.

3
4 18. Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100,
5 inclusive, by and through their officers, directors, employees and/or managing agents, designed,
6 manufactured, marketed, distributed and sold Children's Motrin, including the CHILDREN'S
7 MOTRIN, to their retailers and customers, even as Defendants' officers, directors, employees and/or
8 managing agents, and each of them, knew or had reason to know that the CHILDREN'S MOTRIN had
9 inherent design flaws. Specifically, Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and
10 DOES 1 through 100, inclusive, by and through their officers, directors, employees and/or managing
11 agents, knew the ordinary and expected uses of the CHILDREN'S MOTRIN could and would cause
12 Stevens-Johnson Syndrome and Toxic Epidermal Necrolysis.

13
14 19. Prior to September 2004, the officers, directors, employees and/or managing agents
15 of Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100, inclusive,
16 were aware of the high frequency of Stevens-Johnson Syndrome and Toxic Epidermal Necrolysis and
17 the risk of injury or death to consumers and users of Children's Motrin. The officers, directors,
18 employees and/or managing agents of Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and
19 DOES 1 through 100, inclusive were put on notice of the high risk to consumers and users of
20 Children's Motrin after the completion of a major clinical trial known as the Boston Fever Study,
21 which was the basis of the FDA approval of the OTC sale of the drug. Specifically, Defendants J&J;
22 MCNEIL and DOES 1 through 100, inclusive, by and through their officers, directors, employees
23 and/or managing agents, knew that there were cases of Stevens-Johnson Syndrome and Toxic
24 Epidermal Necrolysis in the clinical trials but did not report them and misrepresented the true
25 incidence of serious mucocutaneous reactions associated with the drug during the Boston Fever Study.

26
27 20. Prior to September 2004, the officers, directors, employees and/or managing agents
28 of Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100, inclusive,

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1 were aware of the high frequency of Stevens-Johnson Syndrome and Toxic Epidermal Necrolysis and
2 the risk of injury or death to consumers and users of Children's Motrin. The officers, directors,
3 employees and/or managing agents of Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and
4 DOES 1 through 100, inclusive were put on notice of the high risk to consumers and users of the
5 Children's Motrin by the numerous claims and lawsuits filed by consumers and users of Children's
6 Motrin who were severely injured or killed as a result of ingesting the drug. Defendants J&J and
7 MCNEIL and their officers, directors, employees and/or managing agents knew the reasons why the
8 Children's Motrin continued to cause Stevens-Johnson Syndrome and Toxic Epidermal Necrolysis
9 and yet chose to take no corrective action because Defendants J&J and MCNEIL determined that such
10 action would decrease the companies' profitability and be too costly when compared to litigating the
11 resulting claims and lawsuits by consumers and users of Children's Motrin, including the
12 CHILDREN'S MOTRIN.

13
14 21. Prior to September 2004, the officers, directors, employees and/or managing agents
15 of Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100, inclusive,
16 knew or should have known that Children's Motrin, including the CHILDREN'S MOTRIN, was
17 substandard and would cause consumers and users who used the Children's Motrin in a foreseeable
18 manner death and serious injury. Moreover, the officers, directors, employees and/or managing agents
19 of Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100, inclusive,
20 knew or should have known that the CHILDREN'S MOTRIN was defective and extremely dangerous
21 with the likely result of serious bodily injury and/or death to the drug's users and consumers. The
22 officers, directors, employees and/or managing agents of Defendants J&J; MCNEIL; MCKESSON;
23 WAL-MART; and DOES 1 through 100, inclusive, knew prior to this incident, and even prior to the
24 manufacture of the CHILDREN'S MOTRIN, of the availability of safer, affordable alternative designs
25 for the CHILDREN'S MOTRIN, which would have reduced or eliminated the risk of severe injuries
26 and/or death to its consumers and users.

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22. Despite this knowledge, Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100, inclusive, by and through their officers, directors, employees and/or managing agents, failed to recall the CHILDREN'S MOTRIN, issue safety bulletins to the public, or even advise or warn purchasers by providing warnings of the severe risk of injury or death from use of the drug present at the time of its original manufacture and sale. Although the officers, directors, employees and/or managing agents of Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100, inclusive, were aware of the need to recall the CHILDREN'S MOTRIN, issue public safety bulletins, and/or provide adequate warnings, Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100, inclusive, through the decisions of their officers, directors, employees and/or managing agents, acted in conscious disregard of the rights and safety of consumers and users by failing to utilize available safer alternative designs, warn of the hazards, and/or recall the Children's Motrin, including the CHILDREN'S MOTRIN, prior to the subject incident. In fact, Plaintiffs believe and thereupon allege that the officers, directors, employees and/or managing agents of Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100, inclusive, in an effort to mislead the public and thereby increase corporate profits at the expense of human safety, summarily disregarded any information regarding the high risk of injury and death inherent in Children's Motrin, including the CHILDREN'S MOTRIN, which was unfavorable to their companies and might lead consumers and users to refrain from purchasing or using Children's Motrin.

23. At all times mentioned herein, the officers, directors, and/or managing agents of Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100, inclusive, authorized and/or ratified the conduct of their employees who knew of the growing number of serious injuries and deaths to consumers and users resulting from Children's Motrin and the need for additional warnings. Further, at all times mentioned herein, the officers, directors, and/or managing agents of Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100, inclusive, authorized and/or ratified the conduct of their employees who knowingly failed to provide warnings and/or recall Defendants J&J and MCNEIL'S defective drug, in spite of their knowledge of

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1 the grave danger and the availability of technically and economically feasible alternatives to prevent
2 death or serious bodily injury to consumers and users.

3
4 24. As a result of Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES
5 1 through 100's conscious disregard of consumer safety, by and through the actions and inactions of
6 their officers, directors, employees and/or managing agents, Plaintiffs were unaware of the hazardous
7 and defective condition of the CHILDREN'S MOTRIN. Had Plaintiffs been advised of problems
8 with Children's Motrin, Plaintiff THOMAS B. GAINES would have never ingested the drug and thus
9 avoided the severe injuries and death which resulted.

10
11 25. Plaintiffs are informed and believe, and thereupon allege, that at all times herein
12 relevant, the CHILDREN'S MOTRIN which Plaintiff THOMAS B. GAINES ingested was defective
13 when placed on the market by Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES
14 1 through 100, inclusive, and each of them, and was of such a nature that the defects would not be
15 discovered in the normal course of inspection and use by consumers and users thereof.

16
17 26. Plaintiffs are informed and believe, and thereupon allege, that at all times herein
18 relevant, the CHILDREN'S MOTRIN which Plaintiff THOMAS B. GAINES ingested was defective
19 in design, testing, development, manufacture, fabrication, assembly, distribution, warnings,
20 instructions, inspection, and/or marketing and the damages, injuries and death sustained by Plaintiff
21 THOMAS B. GAINES were caused by the defects in the CHILDREN'S MOTRIN.

22
23 27. In late September 2004, Plaintiff THOMAS B. GAINES ingested the CHILDREN'S
24 MOTRIN in a reasonably foreseeable manner. As a direct and proximate result of the defective
25 condition of the CHILDREN'S MOTRIN, as well as the conduct of Defendants J&J; MCNEIL;
26 MCKESSON; WAL-MART; and DOES 1 through 100, inclusive, and the officers, directors,
27 employees and/or managing agents of Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and
28 DOES 1 through 100, inclusive, and each of them, Plaintiff THOMAS B. GAINES was injured and

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1 hurt in his health, strength, and activity, sustaining injuries to his body, and shock and injuries to his
2 nervous system and person, all of which said injuries caused Plaintiff THOMAS B. GAINES great
3 physical, mental, and nervous pain and suffering, all to his general damage, in an amount in excess
4 of the jurisdictional limits of this Court.

5
6 28. As a direct and proximate result of the defective condition of the CHILDREN'S
7 MOTRIN, the conduct of Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1
8 through 100, inclusive, and the conduct of the officers, directors, employees and/or managing agents
9 of Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100, inclusive, and
10 each of them, Plaintiff THOMAS B. GAINES was compelled to and did employ the services of
11 hospitals, physicians, surgeons, nurses and the like, to care for and treat him, and did incur hospital,
12 medical, professional and incidental expenses, the exact amount of said expenses will be stated
13 according to proof.

14
15 29. The above-described conduct of Defendants J&J; MCNEIL; and DOES 1 through
16 100, inclusive, by and through their officers, directors, employees and/or managing agents, was carried
17 out with a conscious disregard of Plaintiffs' rights and of the safety of consumers and, therefore,
18 Plaintiffs are entitled to an award of punitive damages in an amount sufficient to punish Defendants
19 J&J; MCNEIL; and DOES 1 through 100, inclusive, in light of their financial condition, and to make
20 an example of them.

21 22 SECOND CAUSE OF ACTION

23 (Negligence/Personal Injury)

24 COME NOW Plaintiffs THOMAS B. GAINES, a deceased minor child by and through his
25 personal representative(s) and/or successor(s) in interest; DIANA L. GAINES, individually, as
26 Executor of the Estate of Thomas B. Gaines, and as Thomas B. Gaines' personal representative and
27 successor in interest; GARY D. GAINES, individually and as Thomas B. Gaines' personal
28 representative and successor in interest; and THE ESTATE OF THOMAS B. GAINES, and for a

1 Second Cause of Action against Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES
2 1 through 100, inclusive, and each of them, complain and allege as follows:

3
4 30. Plaintiffs re-allege as though fully set forth at length, and incorporate herein by
5 reference, all of the allegations and statements contained in paragraphs 1 through 15, inclusive, of the
6 General Allegations and paragraphs 16 through 29, inclusive, of the First Cause of Action above.

7
8 31. At all times mentioned herein, Defendants J&J; MCNEIL; MCKESSON; WAL-
9 MART; and DOES 1 through 100, inclusive, and each of them, were engaged in the business of and
10 had a duty to manufacture, fabricate, design, assemble, sell, distribute, test, inspect, market, warrant,
11 warn, instruct, and/or advertise the CHILDREN'S MOTRIN, in a reasonable manner, and which
12 Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100, inclusive, and
13 each of them, knew, or in the exercise of reasonable care should have known, would be used without
14 inspection for defects in its manufacture or design.

15
16 32. At all times mentioned herein, Defendants J&J; MCNEIL; MCKESSON; WAL-
17 MART; and DOES 1 through 100, inclusive, and each of them, by and through their officers, directors,
18 employees and/or managing agents, negligently, recklessly, and/or carelessly manufactured, fabricated,
19 designed, assembled, distributed, tested, sold, inspected, marketed, warranted, warned, instructed,
20 and/or advertised the CHILDREN'S MOTRIN, in that the same was capable of causing and in fact
21 did cause personal injuries to the consumer and/or user thereof while being used in a manner
22 reasonably foreseeable, thereby rendering the same unsafe and dangerous for use by the consumer
23 and/or user. Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100,
24 inclusive, and each of them, also failed to recall the CHILDREN'S MOTRIN, or warn consumers of
25 the risk of serious injury or death from continued use of the CHILDREN'S MOTRIN after having
26 notice of an alarming number of injuries and deaths from ingesting Children's Motrin.

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33. As a direct and proximate result of the above-described conduct of the Defendants, including J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100, inclusive, and each of them, and the defects in the CHILDREN'S MOTRIN, Plaintiff THOMAS B. GAINES was injured and hurt in his health, strength, and activity, sustaining injuries to his body, and shock and injury to his nervous system and person, all of which said injuries caused Plaintiff THOMAS B. GAINES great physical, mental, and nervous pain and suffering, all to his general damage, in an amount in excess of the jurisdictional limits of this Court.

34. As a direct and proximate result of the conduct of the Defendants, including J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100, and each of them, as aforesaid, Plaintiff THOMAS B. GAINES was compelled to and did employ the services of hospitals, physicians, surgeons, nurses and the like, to care for and treat him, and did incur hospital, medical, professional and incidental expenses, the exact amount of which will be stated according to proof.

35. The above-described conduct of Defendants J&J; MCNEIL; and DOES 1 through 100, inclusive, by and through their officers, directors, employees and/or managing agents, was carried out in conscious disregard of Plaintiffs' rights and of the safety of consumers and, therefore, Plaintiffs are entitled to an award of punitive damages in an amount sufficient to punish Defendants J&J; MCNEIL; and DOES 1 through 100, inclusive, in light of their financial condition, and to make an example of them.

THIRD CAUSE OF ACTION

(Breach of Warranty/Personal Injury)

COME NOW Plaintiffs THOMAS B. GAINES, a deceased minor child by and through his personal representative(s) and/or successor(s) in interest; DIANA L. GAINES, individually, as Executor of the Estate of Thomas B. Gaines, and as Thomas B. Gaines' personal representative and successor in interest; GARY D. GAINES, individually and as Thomas B. Gaines' personal representative and successor in interest; and THE ESTATE OF THOMAS B. GAINES, and for a

1 Third Cause of Action against Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES
2 1 through 100, inclusive, and each of them, complain and allege as follows:

3
4 36. Plaintiffs re-allege as though fully set forth at length, and incorporate herein by
5 reference, all of the allegations and statements contained in paragraphs 1 through 15, inclusive, of the
6 General Allegations, paragraphs 16 through 29, inclusive, of the First Cause of Action, and paragraphs
7 30 through 35, inclusive, of the Second Cause of Action above.

8
9 37. Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100,
10 inclusive, and each of them, by and through their officers, directors and managing agents, impliedly
11 and expressly warranted to Plaintiffs and each consumer and/or user that the CHILDREN'S MOTRIN
12 was fit for the purpose for which it was to be used and was free from design and manufacturing defects
13 to consumers and users thereof.

14
15 38. As stated in detail above and re-alleged herein, the CHILDREN'S MOTRIN was not
16 free from such defects, nor fit for the purpose for which it was to be used, and was in fact, defectively
17 manufactured and designed and imminently dangerous to consumers and users, including Plaintiff
18 THOMAS B. GAINES, and was capable of causing, and in fact did cause, injuries to the users and
19 consumers thereof, while being used in a manner reasonably foreseeable, thereby rendering same
20 unsafe and dangerous for use by consumers and/or users.

21
22 39. As a direct and proximate result of the above-described breaches of warranties by
23 Defendants, including J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100,
24 inclusive, and each of them, and by and through the officers, directors, employees and/or managing
25 agents of Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100,
26 inclusive, and each of them, and the defective condition of the CHILDREN'S MOTRIN, Plaintiff
27 THOMAS B. GAINES was injured and hurt in his health, strength, and activity, sustaining injuries
28 to his body, and shock and injury to his nervous system and person, all of which said injuries caused

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1 Plaintiff THOMAS B. GAINES great physical, mental, and nervous pain and suffering, all to his
2 general damage, in an amount in excess of the jurisdictional limits of this Court.

3
4 40. As a direct and proximate result of the above-described breaches of warranties by
5 Defendants, including J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100,
6 inclusive, and each of them, and by and through the officers, directors, employees and/or managing
7 agents of Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100,
8 inclusive, and each of them, and the defective condition of the CHILDREN'S MOTRIN, Plaintiff
9 THOMAS B. GAINES was compelled to and did employ the services of hospitals, physicians,
10 surgeons, nurses and the like, to care for and treat him, and did incur hospital, medical, professional
11 and incidental expenses, the exact amount of said expenses will be stated according to proof.

12
13 41. As aforementioned in this Complaint, and re-alleged herein, the above-described
14 breaches and conduct of Defendants J&J; MCNEIL; and DOES 1 through 100, inclusive, by and
15 through their officers, directors, employees and/or managing agents, were carried out in conscious
16 disregard of Plaintiffs' rights and of the safety of consumers and, therefore, Plaintiffs are entitled to
17 an award of punitive damages in an amount sufficient to punish Defendants J&J; MCNEIL; and DOES
18 1 through 100, inclusive, in light of their financial condition, and to make an example of them.

20 FOURTH CAUSE OF ACTION

21 (Wrongful Death)

22 COME NOW Plaintiffs DIANA L. GAINES, individually, as Executor of the Estate of
23 Thomas B. Gaines, and as Thomas B. Gaines' personal representative and successor in interest; and
24 GARY D. GAINES, individually and as Thomas B. Gaines' personal representative and successor in
25 interest, and for a Fourth Cause of Action against Defendants J&J; MCNEIL; MCKESSON; WAL-
26 MART; and DOES 1 through 100, inclusive, and each of them, complain and allege as follows:
27
28

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1 42. Plaintiffs re-allege as though fully set forth at length, and incorporate herein by
2 reference, all of the allegations and statements contained in paragraphs 1 through 15, inclusive, of the
3 General Allegations, paragraphs 16 through 29, inclusive, of the First Cause of Action, paragraphs 30
4 through 35, inclusive, of the Second Cause of Action, and paragraphs 36 through 41, inclusive, of the
5 Third Cause of Action above.

6
7 43. At all times mentioned herein, Defendants J&J; MCNEIL; MCKESSON; WAL-
8 MART; and DOES 1 through 100, inclusive, and each of them, were engaged in the business of and
9 had a duty to manufacture, fabricate, design, assemble, sell, distribute, test, inspect, market, warrant,
10 warn, instruct, and/or advertise the CHILDREN'S MOTRIN, in a reasonable manner, and which
11 Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100, inclusive, and
12 each of them, knew, or in the exercise of reasonable care should have known, would be used without
13 inspection for defects in its manufacture or design.

14
15 44. At all times mentioned herein, Defendants J&J; MCNEIL; MCKESSON; WAL-
16 MART; and DOES 1 through 100, inclusive, and each of them, by and through their officers, directors,
17 employees and/or managing agents, negligently, recklessly, and/or carelessly manufactured, fabricated,
18 designed, assembled, distributed, tested, sold, inspected, marketed, warranted, warned, instructed,
19 and/or advertised the CHILDREN'S MOTRIN, in that the same was capable of causing and in fact
20 did cause personal injuries to the consumer and/or user thereof while being used in a manner
21 reasonably foreseeable, thereby rendering the same unsafe and dangerous for use by the consumer
22 and/or user. Defendants J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100,
23 inclusive, and each of them, also failed to recall the CHILDREN'S MOTRIN, or warn consumers of
24 the risk of serious injury or death from continued use of the CHILDREN'S MOTRIN after having
25 notice of an alarming number of injuries and deaths from ingesting Children's Motrin.

26
27 45. As a direct and proximate result of the above-described conduct of the Defendants,
28 including J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100, inclusive, and each

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1 of them, and the defects in the CHILDREN'S MOTRIN; Plaintiff THOMAS B. GAINES suffered
2 extreme pain and suffering and an excruciating death, in an amount in excess of the jurisdictional
3 limits of this Court.

4
5 46. As a direct and proximate result of the above-described conduct of the Defendants,
6 including J&J; MCNEIL; MCKESSON; WAL-MART; and DOES 1 through 100, inclusive, and each
7 of them; the defects in the CHILDREN'S MOTRIN; and the resulting death of their son THOMAS
8 B. GAINES, Plaintiffs DIANA L. GAINES and THOMAS B. GAINES suffered severe damages,
9 including but not limited to financial support and the loss of Thomas' love, companionship, comfort,
10 and affection, all in an amount in excess of the jurisdictional limits of this Court.

11
12 47. The above-described conduct of Defendants J&J; MCNEIL; and DOES 1 through
13 100, inclusive, by and through their officers, directors, employees and/or managing agents, was carried
14 out in conscious disregard of Plaintiffs' rights and of the safety of consumers and, therefore, Plaintiffs
15 are entitled to an award of punitive damages in an amount sufficient to punish Defendants J&J;
16 MCNEIL; and DOES 1 through 100, inclusive, in light of their financial condition, and to make an
17 example of them.

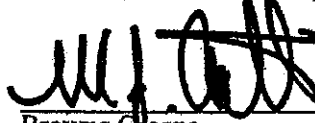
18
19 WHEREFORE, on the First, Second, Third, and Fourth Causes of Action, Plaintiffs pray
20 judgment as follows:

- 21 1. For general damages for personal injury in excess of Ten Million Dollars
22 (\$10,000,000.00) according to proof;
- 23 2. For economic damages for medical, hospital and related expenses which amount will
24 be stated according to proof;
- 25 3. For economic and noneconomic damages resulting from the death of Thomas B.
26 Gaines, including but not limited to damages for the pain and suffering Thomas B.
27 Gaines endured prior to his death, in excess of Ten Million Dollars (\$10,000,000.00)
28 according to proof;

- 1 4. As to Defendants JOHNSON & JOHNSON and MCNEIL CONSUMER &
2 SPECIALTY PHARMACEUTICALS, a Division of MCNEIL-PPC, INC., for an
3 award of exemplary damages, in an amount properly calculated to punish said
4 Defendants for their despicable conduct and conscious disregard for the safety of
5 others, and to deter any such despicable conduct and conscious disregard for the
6 safety of others in the future;
- 7 5. For costs of suit incurred herein;
- 8 6. For prejudgment interest according to proof; and
- 9 7. For such other and further relief as the Court may deem just and proper.

10
11 DATED: November 2, 2006

GREENE BROILLET & WHEELER, LLP

12
13 

14 Browne Greene
15 Michael J. Avenatti
16 Attorneys for Plaintiffs
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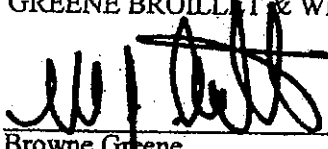
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DEMAND FOR TRIAL BY JURY

Plaintiffs THOMAS B. GAINES, a deceased minor child by and through his personal representative(s) and/or successor(s) in interest; DIANA L. GAINES, individually, as Executor of the Estate of Thomas B. Gaines, and as Thomas B. Gaines' personal representative and successor in interest; GARY D. GAINES, individually and as Thomas B. Gaines' personal representative and successor in interest; and THE ESTATE OF THOMAS B. GAINES hereby demand trial of all causes by jury.

DATED: November 2, 2006

GREENE BROILLET & WHEELER, LLP


Browne Greene
Michael J. Avenatti
Attorneys for Plaintiffs

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EXHIBIT B

CHARLES F. PREUSS (State Bar No. 45783)
 THOMAS W. PULLIAM, JR. (State Bar No. 46322)
 CHERYL A. SABNIS (State Bar No. 224323)
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 Telephone: (415) 591-7500
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Attorneys for Defendants
 JOHNSON & JOHNSON, MCNEIL CONSUMER
 HEALTHCARE, a Division of MCNEIL-PPC, INC.
 (erroneously sued as MCNEIL CONSUMER &
 SPECIALTY PHARMACEUTICALS,
 a Division of MCNEIL-PPC, INC.), MCKESSON
 CORPORATION, and WAL-MART STORES, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SAN FRANCISCO

THOMAS B. GAINES, a deceased minor
 child by and through his personal
 representative(s) and/or successor(s) in
 interest; DIANA L. GAINES, individually,
 as Executor of the Estate of Thomas B.
 Gaines, and as Thomas B. Gaines' personal
 representative and successor in interest;
 GARY D. GAINES, individually and as
 Thomas B. Gaines' personal representative
 and successor in interest; and THE
 ESTATE OF THOMAS B. GAINES,

Plaintiffs,

v.

JOHNSON & JOHNSON, a New Jersey
 corporation; MCNEIL CONSUMER &
 SPECIALTY PHARMACEUTICALS, a
 Division of MCNEIL-PPC, INC., a New
 Jersey corporation; MCKESSON
 CORPORATION, a Delaware corporation;
 WAL-MART STORES, INC., a Delaware
 corporation; and DOES 1 through 100,
 inclusive,

Defendants.

Case No. CGC-06-457600

**DEFENDANTS' FIRST SET OF
 SPECIAL INTERROGATORIES TO
 PLAINTIFFS**

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1 PROPOUNDING PARTIES: Defendants JOHNSON & JOHNSON, MCNEIL
 2 CONSUMER HEALTHCARE, a Division of
 3 MCNEIL-PPC, INC. (erroneously sued as MCNEIL
 4 CONSUMER & SPECIALTY
 5 PHARMACEUTICALS, a Division of MCNEIL-PPC,
 6 INC.), MCKESSON CORPORATION, and WAL-
 7 MART STORES, INC.

8

9 RESPONDING PARTIES: Plaintiffs DIANA L. GAINES; GARY D. GAINES;
 10 and THE ESTATE OF THOMAS B. GAINES

11 SET NUMBER: One (1-22)

12 Pursuant to California Code of Civil Procedure section 2030.010, *et seq.*,
 13 defendants JOHNSON & JOHNSON, MCNEIL CONSUMER HEALTHCARE, a
 14 Division of MCNEIL-PPC, INC. (erroneously sued as MCNEIL CONSUMER &
 15 SPECIALTY PHARMACEUTICALS, a Division of MCNEIL-PPC, INC.),
 16 MCKESSON CORPORATION, and WAL-MART STORES, INC. (collectively
 17 "Defendants") request that plaintiffs DIANA L. GAINES; GARY D. GAINES; and THE
 18 ESTATE OF THOMAS B. GAINES (collectively "Plaintiffs") respond to these
 19 interrogatories within 30 days after service of these interrogatories, or at such earlier time
 20 as may be ordered by the Court.

21 **Special Interrogatory No. 1:**

22 **IDENTIFY** the PERSON(s) from whom the CHILDREN'S MOTRIN was
 23 purchased.

24 (For the purposes of this set of interrogatories, PERSON means a natural person
 25 or any business or governmental entity. For the purposes of this set of interrogatories,
 26 "IDENTIFY" with respect to a PERSON means state the name, present or last known
 27 address and present or last known telephone number of the PERSON. For the purposes
 28 of this set of interrogatories, "CHILDREN'S MOTRIN" means the Children's Motrin
 referred to in Paragraphs 11 and 15 of the COMPLAINT. For the purposes of this set of
 interrogatories, "COMPLAINT" means the Complaint for Damages filed by YOU on

1 November 3, 2006 in San Francisco County Superior Court and assigned Case No. CGC-
2 06-457600. For the purposes of this set of interrogatories, "YOU" and "YOUR" means
3 the Plaintiffs and their attorneys, agents, representatives and any other person acting on
4 Plaintiffs' behalf.)

5 **Special Interrogatory No. 2:**

6 IDENTIFY the PERSON(s) who purchased the CHILDREN'S MOTRIN from
7 the PERSON(s) identified in YOUR response to Special Interrogatory No. 1.

8 **Special Interrogatory No. 3:**

9 State the lot number of the CHILDREN'S MOTRIN.

10 **Special Interrogatory No. 4:**

11 State the batch number of the CHILDREN'S MOTRIN.

12 **Special Interrogatory No. 5:**

13 State the date the CHILDREN'S MOTRIN was sold to YOU.

14 **Special Interrogatory No. 6:**

15 IDENTIFY all DOCUMENTS that evidence the sale of CHILDREN'S
16 MOTRIN to YOU.

17 (For the purposes of this set of interrogatories, IDENTIFY with respect to a
18 DOCUMENT means state, to the extent known, the (a) type of DOCUMENT; (b) the
19 subject matter to which it relates; (c) the date the DOCUMENT was created; (d) the
20 author(s) of the DOCUMENT; and (e) the recipient(s) of the DOCUMENT.)

21 **Special Interrogatory No. 7:**

22 IDENTIFY the PERSON(s) who has possession of the packaging (including
23 bottles, cartons, vials, boxes or other containers) which contained the CHILDREN'S
24 MOTRIN.

25 **Special Interrogatory No. 8:**

26 IDENTIFY the PERSON(s) who has possession of the remainder of any
27 CHILDREN'S MOTRIN contained in the packaging referred to in Special Interrogatory
28

1 No. 7 above.

2 **Special Interrogatory No. 9:**

3 IDENTIFY the PERSON(s) who has possession of the labeling (including
4 package inserts, brochures, pamphlets and other documents) that accompanied the
5 CHILDREN'S MOTRIN.

6 **Special Interrogatory No. 10:**

7 If YOU no longer have possession, custody or control of the CHILDREN'S
8 MOTRIN (including its bottle, packaging, labeling, and any package insert), IDENTIFY
9 the PERSON(s) who does have possession, custody or control of it.

10 **Special Interrogatory No. 11:**

11 IDENTIFY the PERSON who was the DISTRIBUTOR of the CHILDREN'S
12 MOTRIN.

13 (The term "DISTRIBUTOR" is used in these interrogatories as it is used in
14 Paragraph 9 of the COMPLAINT.)

15 **Special Interrogatory No. 12:**

16 Set forth all facts upon which YOU rely for YOUR contention that MCKESSON
17 is a proper party to this lawsuit.

18 (For purposes of this set of interrogatories, "MCKESSON" means McKesson
19 Corporation and any subsidiary or division thereof.)

20 **Special Interrogatory No. 13:**

21 Describe all EVIDENCE supporting YOUR contention that MCKESSON is a
22 proper party to this lawsuit.

23 (For purposes of this set of interrogatories, "EVIDENCE" means all
24 DOCUMENTS, testimony, or statements made from personal knowledge of any
25 potential witness. For the purposes of this set of interrogatories, "DOCUMENTS"
26 means written, printed, typed, or visually or orally reproduced material of any kind,
27 whether or not privileged, including but not limited to any and all letters, correspondence,
28

1 contracts, agreements, bills, orders, receipts, invoices, statements, records [including but
 2 not limited to medical records], books, articles, computer tapes and reports, press
 3 releases, advertising and promotional literature, prints, drawings, plans, photographs,
 4 printed forms, manuals, brochures, lists, publications, videotapes, or other tape
 5 recordings, films, microfilm, and all other writings, including drafts, typings, printings,
 6 minutes or copies or reproductions thereof in the possession, custody, or control of
 7 YOU.)

8 **Special Interrogatory No. 14:**

9 Set forth all facts upon which YOU rely for YOUR contention that WAL-MART
 10 is a proper party to this lawsuit.

11 (For purposes of this set of interrogatories, "WAL-MART" means Wal-Mart
 12 Stores, Inc., and any subsidiary or division thereof.)

13 **Special Interrogatory No. 15:**

14 Describe all EVIDENCE supporting YOUR contention that WAL-MART is a
 15 proper party to this lawsuit.

16 **Special Interrogatory No. 16:**

17 Set forth all facts upon which YOU rely for YOUR contention that the
 18 CHILDREN'S MOTRIN was sold by WAL-MART.

19 **Special Interrogatory No. 17:**

20 Describe all EVIDENCE supporting YOUR contention that the CHILDREN'S
 21 MOTRIN was sold by WAL-MART.

22 **Special Interrogatory No. 18:**

23 Set forth the facts upon which YOU rely for YOUR contention that the
 24 CHILDREN'S MOTRIN was sold by MCKESSON.

25 **Special Interrogatory No. 19:**

26 Describe all EVIDENCE supporting YOUR contention that the CHILDREN'S
 27 MOTRIN was sold by MCKESSON.

1 **Special Interrogatory No. 20:**

2 Describe the efforts YOU have made to identify the distributor of the
3 **CHILDREN'S MOTRIN.**

4 **Special Interrogatory No. 21:**


5 **IDENTIFY** all **PERSONS** with knowledge of the efforts YOU have made to
6 identify the distributor of the **CHILDREN'S MOTRIN.**

7 **Special Interrogatory No. 22:**

8 Describe all **EVIDENCE** concerning the efforts YOU have made to identify the
9 distributor of the **CHILDREN'S MOTRIN.**

10
11 Dated: January 3, 2007

DRINKER BIDDLE & REATH LLP

12 
13 **THOMAS W. PULLIAM, JR.**

14 Attorneys for Defendants
15 **JOHNSON & JOHNSON, MCNEIL**
16 **CONSUMER HEALTHCARE, a Division**
17 **of MCNEIL-PPC, INC. (erroneously sued**
18 **as MCNEIL CONSUMER & SPECIALTY**
19 **PHARMACEUTICALS,**
20 **a Division of MCNEIL-PPC, INC.),**
21 **MCKESSON CORPORATION, and**
22 **WAL-MART STORES, INC.**

CERTIFICATE OF SERVICE

Thomas B. Gaines, et al. v. Johnson & Johnson, et al.
San Francisco Superior Court, Case No.: CGC-06-457600

I, Michelle Sankey, declare that:

I am at least 18 years of age, and not a party to the above-entitled action. My business address is 50 Fremont Street, 20th Floor, San Francisco, California 94105, Telephone: (415) 591-7500.

On January 3, 2007, I caused to be served the following document(s):

DEFENDANTS' FIRST SET OF SPECIAL INTERROGATORIES TO PLAINTIFFS

by enclosing a true copy of (each of) said document(s) in (an) envelope(s), addressed as follows:

- ☒ BY MAIL: I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. I know that the correspondence is deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed, and with postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at San Francisco, California.
- ☐ BY PERSONAL SERVICE: I caused such envelopes to be delivered by a messenger service by hand to the address(es) listed below:
- ☐ BY OVERNIGHT DELIVERY: I enclosed a true copy of said document(s) in a Federal Express envelope, addressed as follows:
- ☐ BY FACSIMILE: I caused such documents to be transmitted by facsimile transmission and mail as indicated above.

Michael J. Avenatti
GREENE, BROILLET & WHEELER, LLP
100 Wilshire Boulevard, Suite 2100
Santa Monica, CA 90407
Telephone: 310.576.1200
Facsimile: 310.576.1220
e-mail: MAvenatti@greene-broillet.com
Attorneys For Plaintiffs

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 3, 2007 at Los Angeles, California.


MICHELLE SANKEY

EXHIBIT C

1 CHARLES F. PREUSS (State Bar No. 45783)
2 THOMAS W. PULLIAM, JR. (State Bar No. 46322)
3 CHERYL A. SABNIS (State Bar No. 224323)
4 DRINKER BIDDLE & REATH LLP
5 50 Fremont Street, 20th Floor
6 San Francisco, California 94105-2235
7 Telephone: (415) 591-7500
8 Facsimile: (415) 591-7510

9 Attorneys for Defendants
10 JOHNSON & JOHNSON, MCNEIL CONSUMER
11 HEALTHCARE, a Division of MCNEIL-PPC, INC.
12 (erroneously sued as MCNEIL CONSUMER &
13 SPECIALTY PHARMACEUTICALS,
14 a Division of MCNEIL-PPC, INC.), MCKESSON
15 CORPORATION, and WAL-MART STORES, INC.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

THOMAS B. GAINES, a deceased minor
child by and through his personal
representative(s) and/or successor(s) in
interest; DIANA L. GAINES, individually,
as Executor of the Estate of Thomas B.
Gaines, and as Thomas B. Gaines' personal
representative and successor in interest;
GARY D. GAINES, individually and as
Thomas B. Gaines' personal representative
and successor in interest; and THE
ESTATE OF THOMAS B. GAINES,

Plaintiffs,

v.

JOHNSON & JOHNSON, a New Jersey
corporation; MCNEIL CONSUMER &
SPECIALTY PHARMACEUTICALS, a
Division of MCNEIL-PPC, INC., a New
Jersey corporation; MCKESSON
CORPORATION, a Delaware corporation;
WAL-MART STORES, INC., a Delaware
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No. CGC-06-457600

**DEFENDANTS' FIRST SET OF
REQUESTS FOR PRODUCTION TO
PLAINTIFFS**

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DRINKER BIDDLE & REATH LLP
50 Fremont Street, 20th Floor
San Francisco, CA 94105

SF13780911

DEFENDANTS' FIRST SET OF REQUESTS FOR PRODUCTION TO PLAINTIFFS
CASE NO. CGC-06-457600

1 PROPOUNDING PARTIES: Defendants JOHNSON & JOHNSON, MCNEIL
 2 CONSUMER HEALTHCARE, a Division of
 3 MCNEIL-PPC, INC. (erroneously sued as MCNEIL
 4 CONSUMER & SPECIALTY
 PHARMACEUTICALS, a Division of MCNEIL-PPC,
 INC.), MCKESSON CORPORATION, and WAL-
 MART STORES, INC.

5 RESPONDING PARTIES: Plaintiffs DIANA L. GAINES; GARY D. GAINES;
 6 and THE ESTATE OF THOMAS B. GAINES

7 SET NUMBER: One (1-13)

8
 9 Pursuant to California Code of Civil Procedure section 2031.010, *et seq.*,
 10 defendants JOHNSON & JOHNSON, MCNEIL CONSUMER HEALTHCARE, a
 11 Division of MCNEIL-PPC, INC. (erroneously sued as MCNEIL CONSUMER &
 12 SPECIALTY PHARMACEUTICALS, a Division of MCNEIL-PPC, INC.),
 13 MCKESSON CORPORATION, and WAL-MART STORES, INC. (collectively
 14 "Defendants") request that plaintiffs DIANA L. GAINES; GARY D. GAINES; and THE
 15 ESTATE OF THOMAS B. GAINES (collectively "Plaintiffs") respond to these requests
 16 for production and produce copies of all responsive documents at the law offices of
 17 DRINKER BIDDLE & REATH LLP, 50 Fremont Street, 20th Floor, San Francisco,
 18 California within 30 days after service of these requests or at such earlier time as may be
 19 ordered by the Court.

20 **Request No. 1:**

21 All DOCUMENTS described or otherwise identified in YOUR responses to
 22 Defendants' First Set of Special Interrogatories to Plaintiffs.

23 (For the purposes of this set of requests, "DOCUMENTS" means written, printed,
 24 typed, or visually or orally reproduced material of any kind, whether or not privileged,
 25 including but not limited to any and all letters, correspondence, contracts, agreements,
 26 bills, orders, receipts, invoices, statements, records [including but not limited to medical
 27 records], books, articles, computer tapes and reports, press releases, advertising and
 28